

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY TAYLOR,

Defendant and Appellant.

---

In re ANTHONY L. TAYLOR

on

Habeas Corpus.

---

D054023

(Super. Ct. No. SCE279067)

D055495

(Super. Ct. No. SCE279067)

CONSOLIDATED APPEAL from a judgment of the Superior Court of San Diego County, Patricia Cookson, Judge, and petition for writ of habeas corpus. Judgment affirmed; petition denied.

Anthony Taylor pleaded guilty to attempted murder and several enhancements, including two strike prior convictions. At sentencing, the trial court dismissed one strike prior and imposed a 24-year sentence. In his appeal and habeas petition, Taylor asserts

the trial court breached the plea agreement because the court had promised him a 20-year sentence. The contention fails because the record shows there was no promise of a 20-year sentence.

Alternatively, Taylor argues he should be permitted to withdraw his plea because his counsel told him the court had promised a 20-year sentence. We conclude this claim has been forfeited, and also fails on the merits because there is no showing of prejudice.

We affirm the judgment and deny the habeas petition.

## FACTUAL AND PROCEDURAL BACKGROUND

### *The Plea Agreement*

On March 20, 2008, Taylor attacked his estranged wife (Shameeka Smith) with a knife while they were riding on the trolley.<sup>1</sup> The altercation began after Smith told Taylor that if he kept bothering her she would call the police and he would not be able to see his children. Taylor stood up, displayed a knife, bent towards Smith, and tried to stab her repeatedly in the chest. She was still seated and pushed him away from her, causing his stabs to strike her face. The knife slipped out of Taylor's hand and fell to the floor. Taylor and Smith began wrestling for the knife. At some point during the altercation, Taylor punched Smith in the forehead with his fist. Two other passengers grabbed Taylor and pulled him away from Smith. Taylor escaped, but subsequently turned himself in to the police and admitted the knife attack.

---

<sup>1</sup> Because this case involves a guilty plea, our summary of the facts concerning the offense is based on the probation report.

Smith suffered a two and one-half inch laceration near her eyebrow, a three-inch laceration across her left cheek, and a large bump on her forehead. Both lacerations required sutures.

Based on the March 20, 2008 stabbing incident, Taylor was charged with attempted murder, mayhem, assault with a deadly weapon, and corporal injury to a spouse, with allegations of personal infliction of great bodily injury involving domestic violence and personal use of a deadly weapon.<sup>2</sup> The complaint alleged two serious felony prior convictions and two strike prior convictions, arising from Taylor's convictions in 1999 and 2004 of making a criminal threat.

During the change of plea negotiations, Taylor was represented by Attorney Thomas Carnessale. On May 1, 2008, Taylor pleaded guilty to attempted murder with great bodily injury and deadly weapon use enhancements, and admitted the two serious felony and strike prior conviction allegations. The remaining charges were dismissed.

The guilty plea form signed by Taylor stated that the terms of the agreement were that the prosecution would dismiss the balance of the complaint and that the sentence was left to the court. The plea form advised Taylor that as a result of his plea he could receive

---

<sup>2</sup> Taylor was also charged with misdemeanor spousal battery based on an incident occurring on February 10, 2008.

a maximum punishment of "41 years to life."<sup>3</sup> At the change of plea proceeding, the trial court asked Taylor if his understanding of the plea agreement was that the balance of the complaint would be dismissed, the sentence was left to the court, and there were no other promises. Taylor answered "Yes." The trial court also advised Taylor that the maximum sentence he could receive was 41 years to life, and inquired if Taylor understood this.

Taylor responded affirmatively.<sup>4</sup>

Several weeks later, prior to sentencing, Taylor requested to withdraw his plea. After a series of hearings and attorney substitutions, Attorney Daniel Cohen was appointed to represent him. The court set the matter for a hearing on September 29, 2008, to address the issues of plea withdrawal and/or sentencing.

---

<sup>3</sup> Based on the charges to which he pleaded guilty, the potential 41-years-to-life sentence actually consisted of an indeterminate term of 25 years to life for attempted murder based on two strike prior convictions (Pen. Code, §§ 187, subd. (a), 664, subd. (a), 667, subd. (e)(2)(A)(ii)), plus a 16-year determinate sentence based on a five-year upper term for personal infliction of great bodily injury involving domestic violence (Pen. Code, § 12022.7, subd. (e)), a one-year term for deadly weapon use (Pen. Code, § 12022, subd. (b)(1)), and two five-year terms for two prior serious felony convictions (Pen. Code, § 667, subd. (a)(1)). For convenience, we at times use the terminology in the guilty plea form of "41 years to life."

<sup>4</sup> The colloquy was as follows:

"[Court]. [T]he People would dismiss the balance of the complaint, and this is the sentence to Court. Is that your understanding of the plea agreement?"

"[Taylor]. Yes."

"[Court]. Were any other promises made to you or any threats made to you in order to get you to plead guilty?"

"[Taylor]. No."

"[Court]. Do you understand that the maximum the Court could sentence you on this offense is 41 years to life, \$20,000 fine, life term on parole? Do you understand that?"

"[Taylor]. Yes."

On September 15, 2008, Cohen filed a motion to withdraw Taylor's guilty plea, claiming the plea was not voluntary because at the time of the plea Taylor was under stress from family problems, he was taking an incorrect dosage of his medications, and Carnessale did not adequately discuss or prepare the case and was overbearing. At the September 29 hearing, after hearing testimony from Taylor and Carnessale, the trial court denied the plea withdrawal motion.

During the September 29 plea withdrawal hearing, there were several brief references to Taylor's belief that he had been promised a 20-year sentence. At the inception of the hearing, Cohen stated that it was his understanding from speaking with Taylor and Carnessale that "Taylor was under the impression that the court indicated that [it] would strike a strike and that he would be receiving 20 years." Cohen acknowledged that there was nothing in the record of the change of plea proceeding reflecting that the court had indicated it would impose a 20-year sentence. Cohen also noted that although this could provide another basis to move to withdraw the plea, he was not presenting the issue at this juncture because the court had not yet sentenced Taylor. The court responded: "Yes. I think the court should be fair on this. I did conduct a chambers conference. I looked at the photographs. They weren't very pretty; however, based upon what the court felt might be an appropriate sentence for this particular case and the victim's recovery, I was considering striking the strike and putting it in the 20, 22-year category."

Additionally, Carnessale referred to the issue of a 20-year sentence in his testimony at the plea withdrawal hearing. Carnessale testified that the case had been

proceeding to trial because Taylor did not want to accept the deal offered by the prosecution, but on the day of the preliminary hearing Taylor told him he wanted to take the deal after all. Explaining his reason for changing his mind, Taylor told Carnessale: "I'm not going to do anything better. I want to get it over with." Carnessale told Taylor, "I don't think there is a deal anymore." However, Carnessale spoke to the court (and possibly the prosecutor) "to assure [himself] that 20 years was still floating around." They then entered the change of plea without conducting the preliminary hearing. Carnessale testified that when reviewing the guilty plea form with Taylor, he "would [have] reiterate[d] to him that it was my understanding there was still an agreement for 20 years even though I think the change of plea form reflected 41-to-life." For clarification, the prosecutor asked Carnessale whether he meant "a 20-year indication from the court[,]" and Carnessale responded "Yes."

### *Sentencing*

At this same September 29 hearing, after denying the plea withdrawal motion, the court heard arguments concerning sentencing and then imposed a 24-year sentence. To reach this sentence, the court dismissed one of the strike prior convictions for making a criminal threat. The court selected a 10-year term for attempted murder, consisting of a five-year lower term which was doubled based on the remaining criminal threat strike prior. Additionally, Taylor received a three-year lower term for personal infliction of great bodily injury involving domestic violence, one year for personal use of a deadly weapon, and two five-year terms for the two serious felony prior convictions. One of the factors cited by the court in support of its selection of lower terms was the mitigating

factor that Taylor voluntarily acknowledged wrongdoing at an early stage of the criminal process.

When the court imposed the sentence, Taylor became upset, stating that he was not guilty because he was provoked to commit the crime and under other severe stressors at the time. The court reminded Taylor that it had dismissed one of his strike priors and that it could have sentenced him to "4[1]-years-to-life." After a few short discussions between the court and counsel on other matters, Taylor asked, "How many years did I get today?" The court responded, "Twenty-four. I struck a prior and I gave you the lower term." Taylor then asked, "How much time do I have to do on 24 years?" The court told him that because of his strike prior, he was going to get reduced conduct credits.

Neither Taylor nor his counsel moved to withdraw the plea based on the court's imposition of the 24-year sentence.

#### *Requests for Relief Before This Court*

Taylor requested a certificate of probable cause from the trial court to file an appeal from the judgment arising from his guilty plea. As one of the grounds for this request, he stated: "A different sentence was negotiated than what I received." The trial court denied his request for a certificate, and he unsuccessfully sought relief before our court and the California Supreme Court.

Taylor then filed an appeal and a petition for writ of habeas corpus with our court. His habeas petition includes a declaration from Carnessale stating that during a chambers conference with the trial court and the prosecutor, the court indicated that in exchange for the guilty plea "a 20-year sentence would be imposed." Carnessale stated that when he

discussed the plea agreement with Taylor, he "informed him that the trial court would sentence him to 20 years in state prison—no more or less." Carnessale declared that his belief that the court had agreed in chambers to impose a 20-year term was not altered by the court's statement at the change of plea proceeding that the sentence was up to the court. Carnessale stated that based on his discussions with Taylor he did not believe Taylor would have agreed to a bargain contemplating a 24-year sentence, and if he had still been representing Taylor at the time of sentencing he would have objected to the 24-year sentence as a violation of the plea bargain negotiated in chambers.

Taylor also submitted a declaration stating that Carnessale told him the trial court had agreed to impose a 20-year sentence, that he agreed to the plea based on this promise, and he would not have agreed to the plea had he known he would receive a sentence longer than 20 years.

## DISCUSSION

Taylor claims that the trial court promised a 20-year sentence, and, alternatively, that his counsel misadvised him that the court promised a 20-year sentence. These claims require us to evaluate two issues: (1) Was there a violation of the plea agreement, and (2) if not, what was the effect of counsel's misadvisement concerning the sentence?

### *Alleged Violation of the Plea Agreement*

In his appeal and habeas petition, Taylor asserts the trial court breached the plea agreement by imposing a 24-year rather than 20-year sentence, and hence he should be given the 20-year sentence or he should be permitted to withdraw his guilty plea. The



Attorney General argues the appeal must be dismissed because Taylor did not obtain a certificate of probable cause.

To appeal from a conviction based on a guilty plea, a defendant must obtain a certificate of probable cause from the trial court to review any issue that attacks the validity of matters resolved in the plea. (Pen. Code,<sup>5</sup> § 1237.5; *People v. Buttram* (2003) 30 Cal.4th 773, 780-781, 785-787.) However, no certificate is required for an appeal based on an alleged violation of the plea agreement because this claim does not attack the validity of the plea. (*People v. Johnson* (2009) 47 Cal.4th 668, 679, fn. 5; *People v. Rabanales* (2008) 168 Cal.App.4th 494, 500-501.) Accordingly, Taylor was not required to obtain a certificate for his assertion that the 24-year sentence breached the plea agreement.

Further, we agree with Taylor that the issue of a violation of the plea agreement is not forfeited even though Taylor did not move to withdraw his guilty plea in the proceedings below after the court selected a 24-year sentence. The usual rule of forfeiture does not apply to this claim because at the plea proceeding the trial court did not give him an advisement concerning the right to plea withdrawal in the event of noncompliance with the plea agreement. (§ 1192.5; *People v. Walker* (1991) 54 Cal.3d 1013, 1024-1026.)

A significant violation of a plea agreement is not subject to harmless error analysis. (*People v. Walker, supra*, 54 Cal.3d at p. 1026.) Thus, if the 24-year sentence

---

<sup>5</sup> Subsequent statutory references are to the Penal Code.

violated the plea agreement, Taylor is entitled to obtain specific performance or to withdraw his plea without an evaluation of whether he would have agreed to the 24-year sentence had it been made part of the plea agreement. (*Id.* at pp. 1026-1027.)

The record shows the 24-year sentence did not violate the plea agreement. A plea agreement is interpreted according to contract principles. (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) If contractual language is clear and explicit, it governs. (*Ibid.*) If the language is ambiguous or uncertain, the courts consider the circumstances surrounding the agreement to ascertain the parties' intent and to carry out the parties' reasonable expectations. (*Ibid.*; *People v. Nguyen* (1993) 13 Cal.App.4th 114, 120.) A written plea agreement may include both express and implied terms, but implied terms may not be inserted unless they are necessary to effectuate the parties' intentions. (*People v. Arata* (2007) 151 Cal.App.4th 778, 787; *People v. Rabanales, supra*, 168 Cal.App.4th at p. 505.)

The guilty plea form states that the sentence was left to the court. Taylor initialed this term on the form and signed the form, declaring under penalty of perjury that he had read, understood, and initialed each item on the form. His attorney also signed the form, stating that he had personally read and explained to the defendant the entire contents of the form, including the consequences of the plea. At the change of plea proceeding, the trial court orally advised Taylor that under the plea agreement the sentence was left to the court, and Taylor indicated that this was his understanding of the plea agreement. When the court asked if any other promises had been made to him, Taylor responded no. Taylor also answered affirmatively when the court asked him if he understood that his

maximum sentence could be 41 years to life. Thus, there is nothing in the guilty plea form, nor in the oral advisements given to Taylor, that supports that the court had promised a 20-year sentence.

To support his claim that he was promised a 20-year sentence, Taylor cites Carnessale's declaration (submitted with the habeas petition) stating that the court promised a 20-year sentence during the chambers conference, as well as the trial court's statement at the presentencing plea withdrawal hearing that it "was considering striking the strike and putting [the sentence] in the 20, 22-year category." Taylor asserts that a 20-year sentence (or at least a 20- to 22-year sentence) was an implicit term of the plea agreement.

Although Carnessale declared that the court promised a 20-year sentence, the record reflects that the court was merely *considering* a particular sentence. The court's statement in chambers that it was considering a particular sentence does not, standing alone, support a reasonable expectation that the court would necessarily impose this sentence. If the court had promised a definitive sentence, a statement to this effect would have been included in the written guilty plea or incorporated into the advisements at the oral change of plea proceedings. Given the court's representation that it was merely considering a particular sentence, and the failure to make reference to a particular sentence in the guilty plea form or at the oral proceedings, Carnessale's characterization of the plea agreement as including a promise for a 20-year sentence is not persuasive. This conclusion is further supported by the fact that in a sentencing memorandum submitted by Carnessale to the trial court prior to sentencing, Carnessale merely stated

that during "pre-plea discussions it was indicated that the court would be inclined to dismiss one of . . . Taylor's two prior 'strike' convictions." In this memorandum, Carnessale made no mention that the court had promised a 20-year sentence.

However, based on the court's statement during the chambers discussions that it was considering dismissing the strike and imposing a sentence in the 20- to 22-year range, Taylor could reasonably expect that the court would consider this sentencing result when it came time for sentencing. At sentencing, the court adhered to the promised approach. The trial court elected to dismiss a strike prior, although it was under no obligation to do so. The fact that the court selected a 24-year, rather than a 20- to 22-year, sentence does not show the court did not give due consideration to the sentence referenced during the chambers conference.

Taylor's claim that he was entitled to plea withdrawal on the basis of a breach of the plea agreement is unavailing.

#### *Misadvisement About the Sentence*

In his habeas petition, Taylor also asserts he should be permitted to withdraw his plea because he was misadvised about the promised sentence. He argues his plea was not knowing and voluntary, and he was provided ineffective representation, because Carnessale told him the court had promised a 20-year sentence. He asserts he would not have pleaded guilty if he had known he would receive a 24-year sentence.

This claim raised in Taylor's habeas petition is also permissible even though it attacks the validity of the plea and Taylor did not obtain a certificate of probable cause. Although a habeas petition may not be used to circumvent the certificate requirement as

to matters that are reviewable on appeal (*In re Chavez* (2003) 30 Cal.4th 643, 651; *In re Brown* (1973) 9 Cal.3d 679, 682-683), no such circumvention exists here. Taylor's challenge to the plea based on counsel's misadvisement was not fully reviewable on appeal because it includes factual matters (i.e., counsel's statements to him) that were not fully developed in the trial record. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267 [ineffective representation claims based on matters outside trial record are appropriately litigated through habeas petition]; *People v. Johnson*, *supra*, 47 Cal.4th at p. 684.) To the extent the habeas petition raises claims that concern matters outside the trial record, it may be pursued without the probable cause certificate.

However, we conclude the record shows no *prima facie* basis for habeas relief; accordingly, we summarily deny the petition. (*People v. Duvall* (1995) 9 Cal.4th 464, 475.) Taylor's challenge based on counsel's misadvisement has been forfeited by Taylor's failure to raise the issue before the trial court. After the trial court selected the 24-year sentence, Taylor did not request that the plea be withdrawn. Although the failure to move for plea withdrawal may not create a forfeiture in cases where the sentence was in violation of the plea agreement, this exception to the forfeiture rule does not apply to claims that concern a misadvisement about the sentence. (*People v. Walker*, *supra*, 54 Cal.3d at p. 1023; *People v. McClellan* (1993) 6 Cal.4th 367, 377-378.)

Generally, an appellate court will not consider claims of error that could have been, but were not, raised in the trial court. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1412.) Taylor was authorized to request that the trial court permit him to withdraw his plea based on misadvisement concerning the terms of the agreement. (*People v.*

*Castaneda* (1995) 37 Cal.App.4th 1612, 1616; see *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.) The record of the presentencing plea withdrawal motion shows that Cohen had spoken with Carnessale and was aware that Taylor thought the court had promised a 20-year sentence. Further, Taylor himself was, of course, aware of what he thought his sentence was supposed to be under the plea agreement. Given this knowledge, the failure of both Taylor and his counsel to request to withdraw the plea when the trial court selected the 24-year sentence forfeits this challenge to his plea on appeal. (*People v. Turner, supra*, 96 Cal.App.4th at p. 1413; *People v. Pinon* (1973) 35 Cal.App.3d 120, 125-126.)

Apparently recognizing this forfeiture, Taylor asserts that Cohen provided ineffective representation by failing to move to withdraw his plea when the court selected the 24-year sentence. To prevail on a claim of ineffective representation, the defendant must show that defense counsel's representation fell below an objective standard of reasonableness and that it is reasonably probable that the result would have been more favorable to the defendant absent counsel's deficiencies. (*In re Resendiz* (2001) 25 Cal.4th 230, 239.) The defendant must overcome a presumption that counsel's performance fell within the wide range of professional competence and that counsel's actions or inactions can be explained as a matter of sound strategy. (*People v. Carter* (2005) 36 Cal.4th 1114, 1189.)

The record reflects that Cohen was aware that Taylor thought the court had promised a 20-year sentence and that, depending on the sentencing results, Cohen anticipated filing a plea withdrawal motion based on this alleged promise. Nevertheless,

Cohen filed no such motion when the court selected the 24-year sentence. In his habeas petition, Taylor has not submitted a declaration from Cohen explaining why he did not move to withdraw the plea after sentencing. When the record does not provide an explanation for counsel's inaction, relief is not warranted unless there could be no reasonable tactical explanation. (See *People v. Mendoza Tello*, *supra*, 15 Cal.4th at p. 266.)

Here, the record reflects a reasonable strategic basis for Cohen not to move to withdraw the plea on the basis of the selected sentence. If the case had gone to trial and Taylor was convicted of all the charges, he potentially faced an indeterminate sentence of 25 years to life plus a determinate sentence of at least 16 years. (See fn. 3, *ante*.)<sup>6</sup> Because of his guilty plea, he received a 24-year determinate sentence. The difference between a 24-year determinate sentence and a 20-year determinate sentence is small when compared to a potential 16-year determinate sentence *plus* an indeterminate 25-years-to-life sentence with no guarantee of parole. Further, there was no dispute that Taylor committed the attack. When speaking to the police after his arrest and to the probation officer after pleading guilty, Taylor acknowledged that he attacked the victim with a knife.<sup>7</sup> At the presentencing plea withdrawal hearing, Carnessale stated his

---

<sup>6</sup> If any of the dismissed charges were construed as not subject to a section 654 stay because they involved an independent objective, his determinate sentence upon conviction after trial could have been even longer.

<sup>7</sup> Taylor qualified his admission by stating that the victim provoked him. Also, at the hearing on his presentencing plea withdrawal motion, Taylor testified he did not intend to murder his wife.

assessment about the charges (including the prior convictions) had been that there was no "upside" and that Taylor was going to do "a lot of prison time" and the only question was "how long."

Given the undisputed showing that Taylor committed the attack, the potential for a lengthy determinate sentence plus an indeterminate life sentence had the case gone to trial, and the receipt of a determinate 24-year sentence, Cohen could reasonably conclude that it was not in Taylor's best interests to move to withdraw the plea based on his belief that he had been promised a 20-year sentence.

To support his claim of Cohen's ineffective representation, Taylor also posits that if Cohen had objected to the 24-year sentence the court might have lowered his sentence to a 20- to 22-year term. Taylor has not shown there was a reasonable probability of this result. As stated, the guilty plea form and the oral advisements provided to Taylor reflect the sentence was left to the court and there were no other promises, and the court's statement that it was considering a 20- to 22-year sentence did not obligate it to impose a sentence precisely in this range. There is no basis to conclude the court would have elected to reduce the sentence merely because Carnessale had incorrectly told Taylor that the court had promised a 20-year sentence.



The record does not show that Cohen provided ineffective representation by failing to move to withdraw the plea after the trial court selected the 24-year sentence. Accordingly, Taylor is not entitled to relief on this basis.<sup>8</sup>

Alternatively, even if we reach the merits of Taylor's claim that he is entitled to plea withdrawal based on counsel's representation that he was promised a 20-year sentence, he is not entitled to relief because there is no showing of prejudice. As Taylor recognizes, to obtain relief he must show that there is a reasonable probability that had he been correctly advised about the consequences of his plea he would not have pleaded guilty but would have insisted on proceeding to trial. (*In re Resendiz*, *supra*, 25 Cal.4th at p. 253; *In re Vargas* (2000) 83 Cal.App.4th 1125, 1134; see *In re Moser* (1993) 6 Cal.4th 342, 352-353; *People v. Walker*, *supra*, 54 Cal.3d at pp. 1022-1023.) A defendant's self-serving statement that he would not have pleaded guilty if properly advised must be corroborated independently by objective evidence. (*In re Resendiz*, *supra*, 25 Cal.4th at p. 253; see *In re Alvernaz* (1992) 2 Cal.4th 924, 938.)

As discussed, Taylor could reasonably expect from the court's statements during the chambers discussion that it would give due consideration to striking the strike and imposing a sentence in the 20- to 22-year range rather than the permissible 41-years-to-life sentence. Thus, the plea agreement provided Taylor a substantial likelihood of

---

<sup>8</sup> This case does not concern a defendant who requests plea withdrawal and defense counsel refuses to assist with the motion. (See *People v. Brown* (1986) 179 Cal.App.3d 207, 215-216; *People v. Brown* (2009) 175 Cal.App.4th 1469, 1472; *People v. Johnson*, *supra*, 47 Cal.4th at pp. 683-684.) Taylor himself made no request to the trial court to withdraw his plea after the court selected the 24-year sentence.

receiving a sentence that was about one-half the length of the maximum sentence and that did not include an indeterminate life sentence. For essentially the same reasons supporting a tactical reason for counsel not to move for plea withdrawal upon the receipt of the 24-year sentence, there is no objective evidence showing a reasonable probability that Taylor would have rejected the plea had he been accurately advised that the court was considering, but not promising, a sentence in the 20- to 22-year range. If Taylor had rejected the plea agreement and gone to trial, he would have litigated a case in which there was no dispute that he attacked the victim with a knife, and he would have exposed himself to a potential sentence of 41 years to life or more, lost the mitigating factor arising from an early admission of guilt, and lost the court's stated intention to consider dismissing a strike prior conviction so as to avoid a life sentence. Because Taylor would not likely have foregone the significant advantages of the plea had he been properly advised, there was no prejudice from counsel's misadvisement.

#### DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

---

HALLER, J.

WE CONCUR:

---

McCONNELL, P.J.

---

O'ROURKE, J.